Editor's note: 83 I.D. 33

STANLEY M. EDWARDS

IBLA 75-181 Decided February 4, 1976

Appeal from decisions of Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers W 47844, W 47845, W 47846, W 47847.

Set aside and remanded.

1. Oil and Gas Leases: Discretion to Lease

In the absence of a withdrawal of land from mineral leasing, public lands are subject to leasing for oil and gas in the discretion of and under conditions imposed by the Secretary of the Interior.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Consent of Agency

The recommendations of the Forest Service are important in determining whether or not an oil and gas lease should issue for public lands but are not conclusive. Ultimately, the Secretary of the Interior is entrusted with the responsibility of determining whether or not to issue a lease.

3. Oil and Gas Leases: Lands Subject To -- Wilderness Act

Public lands in national forests are presently open to oil and gas leasing regardless of whether they are part of an officially designated wilderness area. However, where the land is within such an established wilderness area, the Secretary of Agriculture has the statutory authority to prescribe reasonable stipulations for the protection of the wilderness character

of the land consistent with the use of the land for the purpose of the lease, although only the Secretary of the Interior may close the land to leasing or prohibit the issuance of a lease.

4. Oil and Gas Leases: Consent of Agency -- Oil and Gas Leases: Discretion to Lease

Where the Bureau of Land Management rejects an oil and gas lease offer for public lands within a national forest solely on the objection of the Forest Service and where the Bureau officials did not make an independent determination whether leasing the lands is or is not in the public interest, the rejection is not a proper exercise of discretion and the the case will be remanded to the Bureau for further consideration.

APPEARANCES: Michael J. Sullivan, Esq., Casper, Wyo., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Stanley M. Edwards appeals from decisions dated September 23 and October 2, 1974, of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers W 47844, W 47845, W 47846 and W 47847 for lands within the Shoshone National Forest. The sole reason given for the rejection of W 47844 was that the Forest Service objects to leasing for oil and gas. The other offers were rejected because the lands in the offer are within the boundaries of the Washakie Wilderness and the Forest Service recommends that the lands not be leased.

On appeal, Edwards asserts that under section 17(c) of the Mineral Leasing Act, 41 Stat. 437, 30 U.S.C. § 226(c) (1970), the applicant "shall be entitled to a lease" where noncompetitive lease offers are filed on public domain or acquired lands. He submits that the Secretary of the Interior has no discretion in the issuance of a lease where the application is on a noncompetitive basis.

Assuming arguendo that discretion does exist, appellant contends that the rejections were an abuse of discretion. He asserts that the decision was arbitrary and capricious, based upon the recommendation of the Forest Service without regard to public interests or without a factual basis.

Appellant further contends that the rejections were contrary to the Department's multiple use concept. He reasons that the Department has broad discretion in prescribing terms and conditions regarding the conduct of operations under an oil and gas lease. Accordingly, he continues, the Department, in exercising its discretion, can prescribe terms and conditions which it deems adequate to resolve any conflicts between competing uses. Appellant expresses his willingness to enter into stipulations which the Forest Service might deem appropriate for the restriction of leasehold operations on the lands and believes that such action would serve to encourage the multiple use concept and obtain the greatest net public benefit from the lands in question.

[1] Appellant's assertion that the Secretary of the Interior has no discretion in the issuance of noncompetitive oil and gas leases of public lands is incorrect. Under section 17 of the Mineral Leasing Act the Secretary has plenary discretion to refuse

an offer to lease. E.g., Udall v. Tallman, 380 U.S. 1 (1965); Rosita Trujillo, 21 IBLA 289 (1975). However, if the Secretary, or one exercising the duly delegated authority of the Secretary, does decide to lease a particular tract, he must issue the lease to the first qualified applicant therefor. Yolana Rockar, 19 IBLA 204 (1975); Lloyd W. Levi, 19 IBLA 201 (1975). In the absence of a withdrawal of land from mineral leasing, public lands ordinarily are subject to leasing for oil and gas in the discretion of, and under the conditions imposed by the Secretary. Esdras K. Hartley, 23 IBLA 102 (1975); Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972).

[2] Appellant's other contentions warrant consideration. Although the Secretary does have discretion in issuing oil and gas leases, a decision to reject a lease must have a reasonable basis. The recommendations of the Forest Service, Department of Agriculture, regarding national forest public lands are important in determining whether a lease should issue, but are not conclusive. Esdras K. Hartley, supra; Bill J. Maddox, 22 IBLA 97 (1975); Beverley Lasrich, 22 IBLA 202 (1975). Ultimately, the Secretary of the Interior is entrusted with the responsibility of determining whether to issue a lease. This is apparent in the cases dealing with stipulations in oil and gas leases. Although the Forest Service's recommendations for stipulations to protect environmental and other land use

values will be carefully considered, in most instances the Department of the Interior determines what stipulations must be required as a prerequisite to lease issuance. Esdras K. Hartley, supra; Earl R. Wilson, 21 IBLA 392 (1975). This Board has been insistent that proposed stipulations be reasonable. If the stipulation is unreasonable, it will be deleted, or the case will be remanded to the Bureau of Land Management for further consideration. Earl Wilson, supra; Bill J. Maddox, supra, Duncan Miller, supra.

Complete rejection of a lease offer is a more extreme measure than the most stringent stipulation. If the Board requires that a stipulation be based on valid reasons, it is even more compelling that a rejection should rest on a sound foundation.

[3] W 47844 was rejected because the Forest Service objects to leasing for oil and gas, and the foregoing discussion concerning stipulations relates principally to that case. The other three were rejected because the lands are within the boundaries of the Washakie Wilderness and the Forest Service recommends that the lands not be leased. The fact that lands are included in a wilderness area does not preclude the issuance of oil and gas leases for these lands.

There is a distinction to be drawn between the rules which apply to public land oil and gas lease offers for lands which have been included officially in established National forest wilderness areas and lease offers for public lands in national forests which have not been so designated. Since this appeal involves offers for lands in both categories, this distinction should be clarified. Under the law, public lands in either category are presently open to oil and gas leasing. Both categories may be leased subject to reasonable stipulations for the protection of other resource values. The difference lies in the fact that where such lands are included in approved wilderness areas, the Secretary of Agriculture has the statutory authority to prescribe appropriate stipulations, whereas with regard to public lands in national forests which do not have wilderness designation, it is the Secretary of the Interior who has the authority to determine what stipulations should be imposed.

The Wilderness Act of September 3, 1964, 16 U.S.C. § 1133(d)(3) (1970), provides:

> (3) Notwithstanding any other provisions of this chapter, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the same extent as applicable prior to September 3, 1964, extend to those national forest lands designated by this chapter as "wilderness areas";

> subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production, and use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and, in oil and gas leasing, discovery work, exploration, drilling, and production, * * *.

Moreover, in addition to this authority for the Secretary of Agriculture to regulate ingress and egress, the same section provides:

> Mineral leases, permits, and licenses covering lands within national forest wilderness areas designated by this chapter shall contain such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted or licensed. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this chapter as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto. (Emphasis added.)

Departmental regulation 43 CFR 3111.1-3(f) implements the statute.

It must be noted that the authority vested in the Secretary of Agriculture to regulate ingress and egress and to prescribe

stipulations for protection of the wilderness character of the land is conditioned in two respects. First, such regulations and/or stipulations must be "reasonable." Second, they must be consistent with the mineral use of the land. We find no authority, express or implied, for the Secretary of Agriculture to withdraw the land from mineral leasing or to prohibit the issuance of a mineral lease. Indeed, the text quoted above would strongly suggest that the intent of the legislation was that these lands would continue to be available until 1984 on the same basis as they had been previously. Thus, an election to refuse to issue an oil and gas lease would continue to be at the discretion of the Secretary of the Interior upon a finding by him, or his delegate, that good cause therefor existed.

[4] Where BLM officials have carefully considered and weighed the multiple use factors and decided rejection of an offer is required in the public interest to protect special environmental and resource values, this Board has upheld such a rejection. E.g., Rosita Trujillo, supra. In the present case, however, the record does not show a proper exercise of discretion by BLM officials based upon an independent determination whether leasing these lands is or is not in the public interest. Esdras K. Hartley, supra.

The Bureau should analyze all factors involved and decide whether the leases should be rejected. One factor to be considered is appellant's willingness to accept reasonable stipulations for the protection of the lands. If, after deliberation, the Bureau decides to reject the offer, reasons for that decision should be enumerated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is reversed and remanded to that office for further consideration.

Edward W. Stuebing
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge